

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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INDIANAPOLIS, INDIANA 46204-2764

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IN RE AN EMERGENCY COMPLAINT)
AGAINST NORTHERN INDIANA PUBLIC)
SERVICE COMPANY ("NIPSCO") BY)
THE COUNTY OF LAPORTE INDIANA)
AND THE CITY OF MICHIGAN CITY)
INDIANA RELATING TO THE PRACTICES)
AND ACTS AFFECTING OR RELATING)
TO THE SERVICE OF NIPSCO AS BEING)
UNSAFE, UNREASONABLE AND)
INSUFFICIENT PURSUANT TO IC 8-1-2-54,)
AND REQUEST FOR COMMISSION)
INVESTIGATION PURSUANT TO IC 8-1-2-58)
AND REQUEST FOR AN INTERIM STATUS)
QUO ORDER)

FILED

OCT 17 2003

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 42194

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") caused the following entry to be made in this Cause:

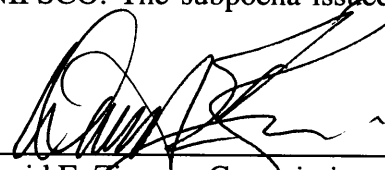
On October 16, 2003, Northern Indiana Public Service Company ("NIPSCO") filed a *Motion to Quash Subpoena of Barrett Hatches, Former CEO of Northern Indiana Public Service Company to Testify in Person on Behalf of the County of the LaPorte and the County of Lake at the Evidentiary Hearing on October 20, 2003* ("Motion"). In its Motion, NIPSCO seeks to quash the subpoena issued to Barrett Hatches, pursuant to 170 IAC 1-1.1-14(c), and indicates, *inter alia*, that the subpoena is in derogation of the Commission's Pre-Trial Order requiring that each parties' direct testimony be pre-filed in written form and served upon all other parties. NIPSCO further indicates that serving the subpoena three business days prior to the Evidentiary Hearing is unreasonable and improper as it deprives NIPSCO of the opportunity to sufficiently prepare a response to testimony elicited from Mr. Hatches and is therefore prejudicial to NIPSCO.

170 IAC 1-1.1-14 sets forth the requirements for subpoenas issued by the Commission, and states, in relevant part that: "(a) The commission shall, at the request of any party, issue subpoenas for the attendance of witnesses and subpoenas duces tecum. Subpoenas shall be signed by the secretary or a commissioner and shall be issued under the seal of the commission. (b) Parties shall prepare subpoenas for issuance and shall be responsible for service. Service must be shown by the return of the sheriff or the affidavit of the party or attorney serving the subpoena. The return or affidavit shall be filed promptly with the commission. (c) Upon motion made at or before the time specified for compliance in that subpoena, the presiding officer or commission may quash or modify the subpoena if it is unreasonable, oppressive, or untimely...."

Pursuant to 170 IAC 1-1.1-14(a), "[t]he Commission *shall*, at the request of any party, issue subpoenas for the attendance of witnesses and subpoenas duces tecum....." (Emphasis added). As the County of LaPorte and the County of Lake properly requested that a subpoena be issued to Mr. Hatches under this section, a subpoena was issued by the Commission pursuant to the plain directive contained in the rule. While 170 IAC 1-1.1-14(a) requires the *issuance* of a subpoena requested by a party, 170 IAC 1-1.1-14(c) authorizes the presiding officer to *quash or modify* the subpoena if it is unreasonable, oppressive, or untimely.

The Presiding Officers, having reviewed the Motion filed by NIPSCO and being duly advised in the premises, hereby find that the subpoena is contrary to the Prehearing Conference Order issued in the Cause in which the Commission established a schedule for the submission of prefiled testimony in this Cause. The subpoena served on Mr. Hatches, who was not presented as a witness in this Cause by NIPSCO or any other party, just three business days before the Evidentiary Hearing in this matter, is unreasonable, oppressive and untimely. Therefore, we hereby GRANT the Motion filed by NIPSCO. The subpoena issued to Barrett Hatches in this matter is hereby QUASHED.

IT IS SO ORDERED.



David E. Ziegner, Commissioner

Scott R. Storms, Chief Administrative Law Judge



Date



Nancy E. Manley, Secretary to the Commission